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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,449	07/27/2001	Steve Carignan	10820.30	6996

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EXAMINER

PURVIS, SUE A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 02/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,449

Applicant(s)

CARIGNAN ET AL.

Examiner

Sue A. Purvis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egosi (US Patent No. 4,843,958) in view of Brooks (US Patent No. 5,660,676).

Egosi discloses an apparatus for applying advertisements to eggs. The device includes a dispensing means (56) for applying advertisements to the egg. Egosi discloses that there are several locations in the machine where the dispensing means can be located and depending on the location in the machine, the dispenser is located at different locations with respect to the conveyor. For example, Figure 3 shows where the dispensing means (56) is mounted above the conveyor (40). Figures 5, 8, and 11 depict the dispensing means (56) position with respect to the gripper carrier (80), each of these figures represent the dispensing means (56) at different sites along the production line. The dispensing means is mounted beneath the conveyor in each of these embodiments and applies the advertisement to the exposed portion of the egg (E). (Col. 5, 4-10 and 45-64; Col. 6, lines 1-8; Col. 7, lines 45-61.)

Egosi discloses that the dispensing means (56) applies the labels by blowing air against the label to move it into contact with the object. The dispensing means (56) is positioned on the

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production line in such a way that it does not interfere with or damage the egg as it moves past the dispensing means (56). (Col. 4, lines 23-43.)

Brooks discloses various types of labelers which are used for discrete items traveling on a conveyor. In particular two of the common types of labelers are (1) the “blow on” labeler which blows the label onto the item and (2) a “laid-on” labeler in which a peel blade is positioned at the end of an arm. (Col. 1, lines 25-35.) Brooks deals with the labeling of fruit, but a concern with fruit is bruising so the labelers cannot press on the fruit too hard. Furthermore, “expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). (See MPEP §2115.)

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a “laid-on” labeler in place of the dispensing means in Egosi, because Brooks teaches that both types of labelers are known and used in the art and as such, it is within the purview of the artisan to use either of these types of labelers. Furthermore, advantages to using a “laid-on” labeler include that the artisan has more control over the labels as they are applied, because the label is placed onto the item, rather than “blown” on, which depends on the blowing means to blow the correct amount of air each time so that the label reaches the item. Another advantage for a “laid-on” labeler is that it is more economical than a “blow-on” labeler as discussed in Brooks. (Col. 1, lines 40-44.)

Regarding claim 2, the exposed surface area onto which the label is applied in Egosi is considered to be “facing generally downward.”

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Regarding claim 3, Egosi includes a grading means and further includes means for depositing the eggs in their packaging. (Col. 4, lines 1-22.) Egosi does not discuss a controller, however, a grading machine would presumably have a controller since there must be a means for deterring the egg's grade and for placing the correct grade in the correct carton.

Regarding claim 4, Figure 6 shows the computer control scheme of the "laid-on" labeler in Brooks with a label sensor and an article sensor. Egosi discloses that means are provided such that only certain eggs have labels applied thereto. In particular, this is done according to the vertical position of the egg in the machine which depends on the eggs weight. (Col. 2, lines 47-56; Col. 5, lines 4-33.) Egosi does not disclose how the label dispensing means knows when an egg is in the position to be labeled, however based on the teaching of Brook, it is within the purview of the artisan to include a computerized labeling control system so the labels are properly placed onto the eggs as they pass. The user parameter in Egosi, is the weight of the label, and parameter communicated by the controller is the egg is in position for labeling or the ultimate destination for the egg. The sorting mechanism in Egosi is designed such that the eggs are advanced according to grade into cartons. (Col. 4, lines 5-10.)

Regarding claims 5 through 8, the device of Egosi in view of Brook is capable of having any number of input parameters or user set parameters. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). (Emphasis in original) (See MPEP §2114.) Furthermore,

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since the labeling device has a control means in the form of a programmable logic computer, it is capable of generating statistical data based on the needs of the artisan.

Regarding claim 9, Egosi is silent on a sensing device, but since it would be a waste for the dispensing means (56) to blow a label and there not be an egg there, it is likely that some sort of sensing device or other means is used to determine when an egg in position to be labeled.

Brooks shows that a sensing device for the article to be labeled. Thus based on the teaching in Brooks, it is within the purview of the artisan to have a sensing device in Egosi to sense when the egg is in a labeling position.

Regarding claims 12 and 14, Brooks teaches that a sponge roller or similar device is used at the end of the labeling arm for applying a slight pressure to the label and push it into contact with the item to be labeled.

3. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egosi in view of Brooks as applied to claim 1 above, and further in view of McEvoy et al. (US Patent No. 6,029,424).

Egosi in view of Brooks does not disclose an egg surface drying device which uses an air stream generating device.

McEvoy discloses a high-speed egg processing system for conveying, cleaning, drying, oiling, candling, grading and packing eggs.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a drying step to the device of Egosi in view of Brooks, because Egosi teaches sorting and packaging eggs but does not mention a cleaning or drying step. McEvoy

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shows that eggs are typically washed and dried before being packaged, since the labels typically require a dry surface in order to adhere to the item, it is within the purview of the artisan to use a drier to help ensure that the surface of the egg is dry before placing the label thereon.

Regarding claim 11, the examiner is taking official notice that it is well known in the art to use an air drier as a drying device. (See MPEP §2144.03.)

4. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egosi in view of Brooks as applied to claim 1 above, and further in view of Bright et al. (US Patent No. 5,858,143).

Egosi in view of Brooks a smoothing device in the form of a roller for helping to ensure the label adheres properly to the item.

Bright discloses that a pressure device such as spring loaded roller (240B), as illustrated at position 4, is used to urge the adhesive covered label onto the surface of the container. Other pressure devices such as a linear wiper arm, a brush, or a stream of directed compressed air may also be used to urge the label to contact the surface of the container. (Col. 16, lines 30-38.)

It would have been obvious to one having ordinary skill in the art at the time the invention was made that a brush or an air jet for directing a stream of compressed air are functionally equivalent alternative expedients of the roller in Brooks, as taught by Bright. Therefore, it is within the purview of the artisan to use a brush or air jet in place of the roller in the device of Egosi in view of Brooks.

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5. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egosi in view of Brooks as applied to claim 1 above, and further in view of Temmink (US Patent No. 5,918,726) and Nanbu (JP 10-101048).

Egosi in view of Brooks does not disclose multiple sets of grippers with labeling devices dedicated to each row of grippers.

Temmink discloses an apparatus for transporting eggs. In particular, Temmink shows that multiple egg grippers (5) can be used side by side. (Figure 1.)

Nanbu discloses that in an egg labeling system, the labelers are placed side by side as two rows of labels are advanced past the labelers.

It would have been obvious to one having ordinary skill in the art at the time the invention was made that it is within the purview of the artisan to use multiple rows of grippers as shown in Temmink and when multiple rows are used, the artisan would know to also use multiple labelers, as shown by Nanbu. This ensures that all the eggs transported in each row of grippers are labeled properly.

Regarding claim 17, Nanbu only shows two rows, but it is within the purview of the artisan to use as many labelers as there are rows of eggs to be labeled.

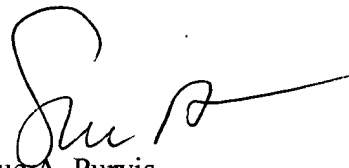
Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is 703-305-0507. The examiner can normally be reached on Monday through Thursday 8am to 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 703-308-3853. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-1495.



Sue A. Purvis
Examiner
Art Unit 1734

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February 5, 2003